

HOUSE BILL 406

By Carter

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 20, relative to the protection of persons exercising rights of expression, including constitutional rights of expression on matters of public concern.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 20, is amended by adding the following new chapter:

20-17-101.

This chapter shall be known and may be cited as the "Public Participation Protection Act."

20-17-102.

The purpose of this chapter is to encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of persons to file meritorious lawsuits for demonstrable injury. This chapter is consistent with and necessary to implement the rights protected by Article I, §§ 19 and 23, of the Constitution of Tennessee, as well as by the First Amendment to the United States Constitution, and shall be construed broadly to effectuate its purposes and intent.

20-17-103.

As used in this chapter:

(1) "Communication" means the making or submitting of a statement or document in any form or medium, including oral, written, audiovisual, or electronic;

(2) "Exercise of the right of association" means a communication between individuals who join together to collectively express, promote, pursue, or defend common interests in connection with a matter of public concern;

(3) "Exercise of the right of free speech" means a communication made in connection with a matter of public concern;

(4) "Exercise of the right to petition" means a communication in connection with an issue under consideration or review by a federal, state, or local legislative, executive, judicial, or other governmental body that:

(A) Is reasonably likely to encourage consideration or review of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body;

(B) Is reasonably likely to enlist public participation in an effort to effect consideration of an issue by a federal, state, or local legislative, executive, judicial, or other governmental body; or

(C) Falls within the protection of the right to petition government under the Constitution of the United States or the Constitution of Tennessee;

(5) "Legal action" means a claim, cause of action, petition, cross-claim, or counterclaim or any request for legal or equitable relief; and

(6) "Matter of public concern" includes an issue related to:

(A) Health or safety;

(B) Environmental, economic, or community well-being;

(C) The government;

(D) A public official or public figure;

(E) A good, product, or service in the marketplace; or

(F) A literary, musical, artistic, theatrical, or cinematic work.

(a) If a legal action is based on, relates to, or is in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may file a special motion to dismiss the legal action.

(b) A special motion to dismiss a legal action under this section must be filed no later than sixty (60) calendar days from the date of service of the legal action. The court may extend the time to file a special motion under this section on a showing of good cause.

(c) A response to the special motion to dismiss may be filed by the non-moving party and, if the non-moving party chooses to file a response, the response must be filed at least ten (10) calendar days prior to the hearing on the special motion. A reply to the non-movant's response may be filed by the moving party at least three (3) calendar days prior to the hearing.

(d) All discovery in the legal action is stayed upon the filing of a special motion to dismiss under this section. The stay of discovery remains in effect until the entry of the order ruling on the special motion and any appeal of the order. Notwithstanding the stay imposed by this subsection (d), the court, on motion of a party or the court's own motion and for good cause shown, may order specified and limited discovery relevant to the special motion to dismiss.

(e) After the filing of a special motion to dismiss under this section, the non-moving party shall not be allowed to amend its pleadings until the court has ruled on the special motion to dismiss and any subsequent appeal of the court's ruling has been resolved.

20-17-105.

(a) The court shall conduct a hearing on the special motion to dismiss no later than sixty (60) calendar days from service of the special motion, or sixty (60) calendar

days after ordering discovery under § 20-17-104, unless docket conditions of the court require a later hearing, upon a showing of good cause, or by agreement of the parties. In no event shall the hearing occur more than one hundred twenty (120) days from service of the special motion, or, if discovery is ordered, more than one hundred twenty (120) days after the order.

(b) Except as otherwise provided in subsection (c), if the moving party makes an initial showing by a preponderance of the evidence that the legal action is based on, relates to, or is in response to, that party's exercise of the right to free speech, right to petition, or right of association as defined in § 20-17-103, the court shall grant the special motion to dismiss, unless the party bringing the action establishes by clear and convincing evidence a prima facie case for each essential element of the legal action in question.

(c) Notwithstanding subsection (b), the court shall grant the special motion to dismiss if the moving party establishes by a preponderance of the evidence each essential element of a valid defense to the legal action in question.

(d) If the non-moving party does not file a response to the special motion to dismiss, the court shall grant the motion to dismiss the legal action with prejudice.

(e) In its determination, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(f) The court shall rule on a special motion to dismiss as soon as possible, but no later than thirty (30) calendar days from the hearing on the motion. If the court does not rule on a motion to dismiss within the period specified by this subsection (f), the motion shall be considered to have been denied by operation of law.

(g) If the court grants a special motion to dismiss, the legal action shall be dismissed with prejudice.

20-17-106.

The court's order granting or denying a special motion to dismiss, or the court's failure to rule on the motion within thirty (30) calendar days from the hearing, is immediately appealable as a matter of right to the court of appeals. The Tennessee Rules of Appellate Procedure applicable to appeals as of right shall govern such appeals.

20-17-107.

(a) If the court orders dismissal of a legal action under this chapter, the court shall award to the moving party:

(1) Court costs, reasonable attorney's fees, and other expenses incurred in defending against the legal action; and

(2) Sanctions against the party who brought the legal action as the court determines are necessary to deter the party who brought the legal action from bringing similar legal actions in the future.

(b) If the court denies a special motion to dismiss on the basis that it is frivolous or was filed solely for the purpose of delay, the court may award to the non-moving party court costs and reasonable attorney's fees incurred in opposing the special motion.

20-17-108.

Nothing in this chapter shall:

(1) Apply to an enforcement action that is brought in the name of the state or a political subdivision of this state by the attorney general, a district attorney general, or a county or municipal attorney;

(2) Result in findings or determinations that are admissible in evidence at any later stage of the underlying legal action or in any subsequent legal action;

(3) Affect or limit the authority of a court to award sanctions, costs, attorney's fees, or any other relief available under any other statute, court rule, or other authority;

(4) Affect, limit, or preclude the right of the moving party to any defense, remedy, immunity, or privilege otherwise authorized by law;

(5) Affect the substantive law governing any asserted claim; or

(6) Create a private right of action.

20-17-109.

If any provision of this part or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this part that can be given effect without the invalid provision or application, and to that end the provisions of this part are declared to be severable.

SECTION 2. This act shall take effect July 1, 2017, the public welfare requiring it, and shall apply to any legal action commenced on or after the effective date of this act.